Chapter 17 – Deed Restrictions

A Affordability Periods

The affordability period for all units is determined by the total amount of assistance that goes into the property, e.g. rehabilitation, demolition, new construction, program delivery and developers fee.

For example: A CDBG owner occupied rehabilitation program where a beneficiary receives the following:

Rehabilitation	$11,500
Program Delivery	$2,000

The affordability period for this unit is 5 years because the total amount of assistance is $13,500.

1. CDBG Affordability Periods

Emergency shelters, youth shelters, migrant/seasonal farm worker housing, rental housing, permanent supportive housing, or transitional housing .

Amount of CDBG subsidy per unit:	*Affordability Period*
Under $15,000 per unit	5 years
$15,000 - $40,000	10 years
Over $40,000 per unit	15 years

Owner-occupied rehabilitation:

Amount of CDBG subsidy per unit:	*Affordability Period*
Less than or equal to $5,000.00	2 years
$5,000.01 - $10,000.00	3 years
Over $10,000.01 per unit to $15,000	5 years

Voluntary Acquisition/Demolition

Amount of CDBG subsidy per unit:	*Affordability Period*
All assistance provided	In perpetuity

2. HOME Affordability Periods

Transitional, permanent supportive, rental, and homebuyer housing:

Under $15,000/unit	5 years
$15,000 - $40,000	10 years
Over $40,000 or rehabilitation involving refinancing	15 years
New Construction or acquisition of newly constructed housing	20 years

On rental developments funded under the HOME program, IHFA will keep a mortgage on the property until the affordability period is complete.

B Deed Restriction

The deed restriction must state that the property will run as the activity that it was funded under, e.g. a beneficiary of an owner-occupied award would need to state that the home will remain the principal place of residency for the duration of the affordability period.

Additionally, for recipients of homebuyer awards, the entity must utilize either resell or recapture provisions and it must be cited in one of the documents.

For further clarification on resell and recapture, please see their individual section as follows.

C. Emergency Shelters, Youth Shelters, Migrant Seasonal Farmworker Housing, Rental Housing, Transitional Housing

The deed restriction for this activity must be for the affordability period and state that the property will run for the affordability period as the activity it was funded.

D. Homebuyer/Owner-Occupied Awards

If there is both development subsidy and homebuyer subsidy or just homebuyer subsidy, the recapture provision must be implemented. If the development consists of development subsidy only (homebuyer awards only), resale provisions must be executed on the property. These requirements must be included in the applicant's program guidelines as outlined in the application.

Termination of Affordability Period

The affordability restrictions must terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure, or assignment of an FHA insured mortgage to HUD. The housing provider of HOME funds may use purchase options, rights of first refusal, or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the development.

Recapture Guidelines

The maximum amount of HOME funds subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy or lease the dwelling unit. This includes any HOME assistance that reduced the purchase price from the fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value (i.e., development subsidy).

The amount to be recaptured is based on a prorata shared net sale proceeds calculation. If there are no proceeds, there is no recapture. Any net sale proceeds that exist would be shared between the recipient and the beneficiary based on the number of years of the affordability period that have been fulfilled, not to exceed the original HOME investment.

The net proceeds are the total sales price minus all loan and/or lien repayments. The net proceeds will be split between the IHFA recipient and borrower as outlined according to the forgiveness schedule below for the affordability period associated with the property. The IHFA recipient must then repay IHFA the recaptured funds.

5 Year Affordability Period

Number of Years Fulfilled	% of HOME Funds Recaptured
Year 1	80%
Year 2	60%
Year 3	40%
Year 4	20%
Year 5	0%

10 Year Affordability Period

Number of Years Fulfilled	% of HOME Funds Recaptured
Year 1	90%
Year 2	80%
Year 3	70%
Year 4	60%
Year 5	50%
Year 6	40%
Year 7	30%
Year 8	20%
Year 9	10%
Year 10	0%

15 Year Affordability Period

Number of Years Fulfilled	% of HOME Funds Recaptured
Year 1	93%
Year 2	87%
Year 3	80%
Year 4	73%
Year 5	67%
Year 6	60%
Year 7	53%
Year 8	47%
Year 9	40%
Year 10	33%
Year 11	27%
Year 12	20%
Year 13	13%
Year 14	7%
Year 15	0%

Resale Guidelines

Where the program design calls for no recapture (home received only a development subsidy), the guidelines for resale will be adopted in lieu of recapture guidelines. Resale restrictions will require the seller to sell the property only to a low-income family that will use the property as their principal residence. The term “low-income family” shall mean a family whose gross annual income does not exceed 80% of the median family income for the geographic area as published annually by HUD.

The purchasing family should pay no more than 29% of its gross family income towards the principal, interest, taxes, and insurance for the property on a monthly basis. Individual grantees may, however, establish guidelines that better reflect their mission and clientele. Such guidelines should be described in the application, program guidelines, or award agreement. The housing shall remain affordable to a reasonable range of low-income buyers for the period described in the HOME regulations, as from time to time may be amended.

The homeowner selling the property will be allowed to receive a fair return on investment, which will include the homeowner’s investment and any capital improvements made to the property.

E. Voluntary Acquisition/Demolition

All purchased property must be deed restricted to prevent the property from being utilized for purposes other than a public use (green space, park land, etc.).

A community who holds title to restricted property acquired through the program may not lease or sell the property.